

AMENDED IN SENATE JUNE 17, 2010

AMENDED IN SENATE APRIL 28, 2010

SENATE BILL

No. 984

Introduced by Senator Hollingsworth

February 8, 2010

An act to ~~amend Section 22358 of the Business and Professions Code,~~
~~and to amend Sections 415.10 and 1011 of~~ *add Section 415.11* to the
Code of Civil Procedure, relating to service of process, and declaring
the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 984, as amended, Hollingsworth. Service of process: ~~residences~~
time.

Existing law ~~requires specified persons to file and maintain with the county clerk, in the county in which they reside or in which their principal place of business is located, a certificate of registration as a process server. That law sets forth a procedure for the revocation or suspension of a certificate if a county clerk determines that a service of process does not comply with the provisions of law governing service of process within this state. Existing law authorizes personal service upon a party in a civil action, if no specific provision is made, by leaving the notice or other papers at the party's residence, between the hours of 8 a.m. and 6 p.m. with a person of not less than 18 years of age.~~

~~This bill would instead authorize personal service in all civil proceedings, if made at party's residence, require the first attempt to serve a summons or complaint initiating an action to be made between the hours of 7 a.m. and 8 p.m. This bill would also require the person making the service to state his or her full name, to state that he or she is at the residence for the purpose of making service, and to identify~~

~~the party upon whom the service is directed. This bill would impose a penalty of \$25,000, per violation, against a server who makes service outside of the designated hours or fails to make these specified disclosures, and would require the revocation of that server's certificate of registration in accordance with existing law. This bill, by specifying new circumstances under which a certificate of registration is required to be revoked, would increase the duties imposed on county clerks and public prosecutors and would constitute a state-mandated local program. This bill would further impose a penalty of \$10,000 for service made to the wrong residence and would also require the revocation of that server's certificate of registration if that erroneous service was caused by the server's negligence, in accordance with existing law.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.~~

~~This bill would declare that it is to take effect immediately as an urgency statute.~~

~~Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes-no.~~

~~State-mandated local program: yes-no.~~

The people of the State of California do enact as follows:

- 1 ~~SECTION 1. Section 415.11 is added to the Code of Civil~~
- 2 ~~Procedure, to read:~~
- 3 ~~415.11. (a) The first attempt to serve a summons and complaint~~
- 4 ~~that initiates an action shall be made between the hours of seven~~
- 5 ~~in the morning and eight in the evening.~~
- 6 ~~(b) Service of a summons in violation of this section shall be~~
- 7 ~~valid and effective.~~
- 8 ~~SECTION 1. Section 22358 of the Business and Professions~~
- 9 ~~Code is amended to read:~~
- 10 ~~22358. (a) (1) A certificate of registration may be revoked or~~
- 11 ~~suspended whenever it has been determined that the registrant has~~
- 12 ~~made a service of process, including service completed by an~~
- 13 ~~employee or independent contractor of the registrant, which does~~
- 14 ~~not comply with the provisions of law governing the service of~~

1 process in this state or constitutes an improper service of process
2 not amounting to a violation of law.

3 (2) A certificate of registration shall be revoked if it is
4 determined that the registrant has made a service of process at the
5 wrong address due to the negligence of the registrant. In addition
6 to the revocation of the certificate of registration, the registrant
7 shall also be assessed a fine of ten thousand dollars (\$10,000), for
8 each violation, to be paid to the person or persons who reside at
9 the address at which the service was erroneously made.

10 (b) An investigation concerning the revocation or suspension
11 of a certificate of registration may be commenced at any time at
12 the option of the county clerk if the county clerk deems it to be
13 appropriate. A complaint by any person who has alleged that he
14 or she has been injured by a service of process shall be investigated
15 by the public prosecutor. The investigation shall determine if the
16 registrant complied with the provisions of law governing the
17 service of process or constituted improper service of process not
18 amounting to a violation of the law.

19 (c) If the public prosecutor determines from the investigation
20 that cause may exist for the suspension or revocation of the
21 certificate of registration, he or she shall set the matter for hearing
22 and give notice to the registrant. That hearing shall be conducted
23 in accordance with Chapter 5 (commencing with Section 11500)
24 of Division 3 of Title 2 of the Government Code except that the
25 decision of the administrative law judge shall be final. For the
26 purposes of those provisions, the public prosecutor shall be deemed
27 to be the agency.

28 (d) If, after the hearing, the county clerk is notified after the
29 decision has become effective that the administrative law judge
30 has directed that the registrant's certificate be suspended or
31 revoked, the county clerk shall forthwith suspend or revoke the
32 certificate. If the certificate is revoked, the bond or cash deposit
33 required by Section 22353 shall be forfeited to the county treasury
34 subject to the right of a person to recover against the bond or cash
35 deposit under Section 22357.

36 SEC. 2. Section 415.10 of the Code of Civil Procedure is
37 amended to read:

38 415.10. (a) A summons may be served by personal delivery
39 of a copy of the summons and of the complaint to the person to

1 be served. Service of a summons in this manner is deemed
2 complete at the time of such delivery.

3 (b) (1) Notwithstanding any other provision of law, a summons
4 served by personal delivery of a copy of the summons and of the
5 complaint to the personal residence of the person to be served may
6 only be made between the hours of seven in the morning and eight
7 in the evening. The person making the service shall state his or
8 her full name, state that he or she is at the residence for the purpose
9 of making service, and identify the party upon whom the service
10 is directed.

11 (2) If service is made at a time other than the hours specified in
12 paragraph (1), or if the server fails to state his or her full name,
13 state that he or she is at the residence for the purpose of making
14 service, or to identify the person upon whom service is directed
15 in violation of paragraph (1), the server shall have his or her
16 certificate of registration revoked in accordance with Section 22358
17 of the Business and Professions Code and shall be assessed a fine
18 in the amount of twenty-five thousand dollars (\$25,000), for each
19 violation, to be paid to the party upon whom service is made.

20 (3) If service is made to the wrong address, the person making
21 the erroneous service shall be assessed a fine of ten thousand
22 dollars (\$10,000), for each violation, to be paid to the person or
23 persons who reside at the address at which the service was
24 erroneously made. If the service was made to the wrong address
25 because of an error in the determination of the address by another
26 person, the person who made the error in determining the address
27 shall be responsible for payment of the fine.

28 (e) The date upon which personal delivery is made shall be
29 entered on or affixed to the face of the copy of the summons at the
30 time of its delivery. However, service of a summons without such
31 date shall be valid and effective.

32 SEC. 3.— Section 1011 of the Code of Civil Procedure is
33 amended to read:

34 1011. The service may be personal, by delivery to the party or
35 attorney on whom the service is required to be made, or it may be
36 as follows:

37 (a) If upon an attorney, service may be made at the attorney's
38 office, by leaving the notice or other papers in an envelope or
39 package clearly labeled to identify the attorney being served, with
40 a receptionist or with a person having charge thereof. When there

1 is no person in the office with whom the notice or papers may be
2 left for purposes of this subdivision at the time service is to be
3 effected, service may be made by leaving them between the hours
4 of nine in the morning and five in the afternoon, in a conspicuous
5 place in the office, or, if the attorney's office is not open so as to
6 admit of that service, then service may be made by leaving the
7 notice or papers at the attorney's residence, with some person of
8 not less than 18 years of age, if the attorney's residence is in the
9 same county with his or her office, and, if the attorney's residence
10 is not known or is not in the same county with his or her office,
11 or being in the same county it is not open, or a person 18 years of
12 age or older cannot be found at the attorney's residence, then
13 service may be made by putting the notice or papers, enclosed in
14 a sealed envelope, into the post office or a mailbox, subpost office,
15 substation, or mail chute or other like facility regularly maintained
16 by the Government of the United States directed to the attorney at
17 his or her office, if known and otherwise to the attorney's residence,
18 if known. If neither the attorney's office nor residence is known,
19 service may be made by delivering the notice or papers to the
20 address of the attorney or party of record as designated on the court
21 papers, or by delivering the notice or papers to the clerk of the
22 court, for the attorney.

23 (b) (1) If upon a party, service shall be made in the manner
24 specifically provided in particular cases, or, if no specific provision
25 is made, service may be made by leaving the notice or other paper
26 at the party's residence, between the hours of seven in the morning
27 and eight in the evening, with some person of not less than 18
28 years of age. The person making the service shall state his or her
29 full name, state that he or she is at the residence for the purpose
30 of making service, and identify the party upon whom the service
31 is directed. If at the time of attempted service between those hours
32 a person 18 years of age or older cannot be found at the party's
33 residence, the notice or papers may be served by mail. If the party's
34 residence is not known, then service may be made by delivering
35 the notice or papers to the clerk of the court, for that party.

36 (2) If service is made at a time other than the hours specified in
37 paragraph (1), or if the server fails to state his or her name full
38 name, state that he or she is at the residence for the purpose of
39 making service, or to identify the party upon whom service is
40 directed in violation of paragraph (1), the server shall have his or

1 her certificate of registration revoked in accordance with Section
2 22358 of the Business and Professions Code and shall be assessed
3 a fine in the amount of twenty-five thousand dollars (\$25,000);
4 for each violation, to be paid to the party upon whom service is
5 made.

6 (3) If service is made to the wrong address, the person making
7 the erroneous service shall be assessed a fine of ten thousand
8 dollars (\$10,000), for each violation, to be paid to the person or
9 persons who reside at the address at which the service was
10 erroneously made. If the service was made to the wrong address
11 because of an error in the determination of the address by another
12 person, the person who made the error in determining the address
13 shall be responsible for payment of the fine.

14 SEC. 4. If the Commission on State Mandates determines that
15 this act contains costs mandated by the state, reimbursement to
16 local agencies and school districts for those costs shall be made
17 pursuant to Part 7 (commencing with Section 17500) of Division
18 4 of Title 2 of the Government Code.

19 SEC. 5.

20 SEC. 2. This act is an urgency statute necessary for the
21 immediate preservation of the public peace, health, or safety within
22 the meaning of Article IV of the Constitution and shall go into
23 immediate effect. The facts constituting the necessity are:

24 In order to ensure that service of process is performed in a
25 manner that does not interfere with a homeowner's expectations
26 of privacy and freedom from harassment, it is necessary that this
27 act take effect immediately.